

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12448-AO

GMAC MORTGAGE CORPORATION,

Plaintiff,

v.

JEFFREY L. BAYKO, SR., LISA J. BAYKO,  
HELEN E. BAYKO, MICHAEL J. BAYKO,  
BANKNORTH GROUP, HANS R. HAILEY,  
CHARLES D. ROTONDI,  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF REVENUE, THE  
UNITED STATES OF AMERICA, GARY  
EVANS, CHRISTINE ANN FARO, AND  
JOHN AQUINO,

Defendants.

FILED  
IN CLERKS OFFICE  
2005 FEB -8 P 1:10  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

**PLAINTIFF'S MOTION TO DEPOSIT SURPLUS FUNDS  
INTO COURT AND WITHDRAW**

Now comes the Plaintiff, GMAC Mortgage Corporation (hereinafter "GMAC"), and moves pursuant to Rule 67 of the Federal Rules of Civil Procedure to deposit into Court the surplus funds, plus all accrued interest, minus attorney's fees and costs it has incurred in connection with the filing and prosecution of this interpleader action, and to thereafter be discharged of all further liability to the Defendants and be dismissed from the action..

As grounds therefore, the Plaintiff states:

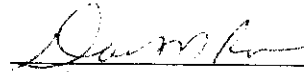
1. Plaintiff is the holder of surplus funds after a mortgage foreclosure sale in the sum of \$186,742.59.

2. The defendants are all of the known potential claimants to the funds.
3. Prior to the Removal of this action from State Court to Federal Court, Plaintiff served a Motion To Deposit Surplus Funds into Court And Withdraw with an affidavit in support of David M. Rosen, Esq.. This motion was served on all Defendants pursuant to Rule 9A of the State Superior Court Rules of Procedure. No opposition was received to this motion. However, the case was removed to Federal Court before the Motion To Deposit was filed with the Court. A true copy of this Motion and supporting Affidavit is attached hereto and incorporated herein as Exhibit A.
4. Since the removal of this action, various Defendants have filed numerous pleadings with the Court seeking to perfect their claims to the funds. The Massachusetts Dept. of Revenue is also seeking dismissal on 11<sup>th</sup> Amendment grounds. No party has voiced any objection to Plaintiff's attempt to deposit the funds with the Court for administration.
5. To date, Plaintiff remains a disinterested party to this action and requests permission to deposit the surplus with the Court, less its fees and costs for this action.

**WHEREFORE**, GMAC Mortgage Corporation respectfully requests this Court allow its Motion to Deposit Surplus Funds in the amount of \$186,742.59, less attorney's fees and costs in the amount of \$3,987.44, into this Honorable Court and thereby be discharged from all further liabilities to the Defendants, and be dismissed from the action.

Respectfully submitted this 4<sup>th</sup> day of February, 2005.

**GMAC MORTGAGE CORPORATION,**  
By its Attorney,



David M. Rosen, Esquire

BBO#: 552866

Harmon Law Offices, P.C.

P.O. Box 610389

Newton Highlands, MA 02461-0389

(617) 558-0500

**HARMON LAW OFFICES, P.C.**

150 CALIFORNIA STREET  
NEWTON, MASSACHUSETTS 02458

MAILING ADDRESS:  
P.O. BOX 610389  
NEWTON HIGHLANDS, MA 02461-0389

TEL (617) 558-8400  
FAX (617) 244-7304

*SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND*

DAVID M. ROSEN  
(617) 558-8457  
(617) 244-7304  
drosen@harmonlaw.com

November 18, 2004

Jeffrey L. Bayko  
61 Story Avenue  
Newburyport, MA 01950

Charles D. Rotondi  
79 State Street  
Newburyport, MA 01950

Christine Ann Faro  
79 State Street  
Newburyport, MA 01950

Timothy Sullivan  
451 Andover Street, Suite 185  
North Andover, MA 01845

Michele Rooke  
Doherty, Wallace, Pillsbury & Murphy  
One Monarch Place  
1414 Main Street, Suite 1900  
Springfield, MA 01144-1900

Hans R. Hailey  
225 Friend Street, 5<sup>th</sup> Floor  
Boston, MA 02114

Eileen McAuliffe  
Massachusetts Department of Revenue  
P.O. Box 55486  
51 Sleeper St  
Boston, MA 02205-5486

Brenda Hyde  
Internal Revenue Service  
P.O. Box 9112, Stop 20800  
Boston, MA 02203

Gary Evans  
Evans Law & Associates  
8 Prospect Street  
Georgetown, MA 01833

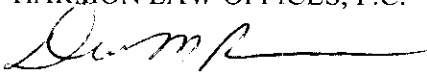
John Aquino  
Anderson Aquino, LLP  
260 Franklin Street, 19<sup>th</sup> Floor  
Boston, MA 02110

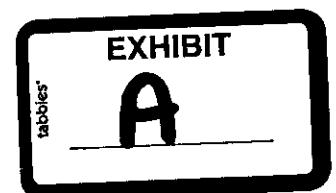
**Re: GMAC Mortgage Corporation v. Jeffrey Bayko, et al.  
Civil Action No. 04-01855-B**

Dear Sir/Madam:

The enclosed copy of the Motion to Deposit Surplus Funds into Court and Withdraw and Affidavit of David M. Rosen are being served upon you pursuant to the Massachusetts Superior Court Rule 9A. Within the time allowed by said rule, please provide me with an original and a copy of your Opposition, if any, for my filing with the Court. Thank you.

Very truly yours,  
HARMON LAW OFFICES, P.C.

  
David M. Rosen



**COMMONWEALTH OF MASSACHUSETTS**

**ESSEX, SS.**

**SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 04-01855-B**

**GMAC MORTGAGE CORPORATION,**

**Plaintiff,**

**v.**

**JEFFREY L. BAYKO, SR., LISA J. BAYKO,  
HELEN E. BAYKO, MICHAEL J. BAYKO,  
BANKNORTH GROUP, HANS R. HAILEY,  
CHARLES D. ROTONDI,  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF REVENUE, THE  
UNITED STATES OF AMERICA, GARY  
EVANS, CHRISTINE ANN FARO, AND  
JOHN AQUINO,**

**Defendants.**

**PLAINTIFF'S MOTION TO DEPOSIT SURPLUS FUNDS  
INTO COURT AND WITHDRAW**

Now comes the Plaintiff, GMAC Mortgage Corporation (hereinafter "GMAC"), and moves pursuant to Rule 67 of the Massachusetts Rules of Civil Procedure to deposit into Court the surplus funds, plus all accrued interest, minus attorney's fees and costs it has incurred in connection with the filing and prosecution of this interpleader action.

As grounds therefore, the Plaintiff states:

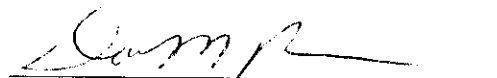
1. It has no right, title or interest to the net surplus funds.
2. Defendant, Jeffrey L. Bayko, has been properly served with process.
3. Defendant, Lisa J. Bayko, has been properly served with process.
4. Defendant, Helen E. Bayko has filed an Answer.
5. Defendant, Michael J. Bayko has filed an Answer.

6. Defendant, Banknorth Group has filed an Answer.
7. Defendant, Hans R. Hailey has filed an Answer.
8. Defendant, Charles D. Rotondi has been properly served with process.
9. Defendant, Commonwealth of Massachusetts Department of Revenue has not filed a response to date.
10. Defendant, The United States of America has been properly served with process.
11. Defendant, Gary Evans has been properly served with process.
12. Defendant, Christine Ann Faro has been properly served with process.
13. Defendant, John Aquino has been properly served with process.

The Plaintiff currently holds the sum of \$186,742.59 in surplus funds. The Plaintiff requests the Court's approval to retain the sum of \$3,987.44 to cover its costs and attorney's fees incurred in connection with this interpleader action. (See Exhibit "A" attached hereto.)

**WHEREFORE**, GMAC Mortgage Corporation respectfully requests this Court allow its Motion to Deposit Surplus Funds in the amount of \$186,742.59, less attorney's fees and costs in the amount of \$3,987.44, into this Honorable Court and thereby be discharged from all further liabilities as to the Defendants.

**GMAC MORTGAGE CORPORATION,**  
By its Attorney,



David M. Rosen, Esquire  
BBO#: 552866  
Harmon Law Offices, P.C.  
P.O. Box 610389  
Newton Highlands, MA 02461-0389  
(617) 558-0500

Dated:

**EXHIBIT "A"**

SUCCESSFUL BID:	\$307,500.00
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FUNDS OWED TO GMAC MORTGAGE CORP.:	\$120,757.41
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SURPLUS FUNDS:	\$186,742.59
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**COMMONWEALTH OF MASSACHUSETTS**

**ESSEX, SS.**

**SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO. 04-01855-B**

**GMAC MORTGAGE CORPORATION,**

**Plaintiff,**

**v.**

**JEFFREY L. BAYKO, SR., LISA J. BAYKO,  
HELEN E. BAYKO, MICHAEL J. BAYKO,  
BANKNORTH GROUP, HANS R. HAILEY,  
CHARLES D. ROTONDI,  
COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF REVENUE, THE  
UNITED STATES OF AMERICA, GARY  
EVANS, CHRISTINE ANN FARO, AND  
JOHN AQUINO,**

**Defendants.**

**AFFIDAVIT OF DAVID M. ROSEN**

I, David M. Rosen, being sworn under oath, do hereby depose and state:

1. I am counsel for the Plaintiff, GMAC Mortgage Corporation.
2. I am a member in good standing of the bar of the State of Massachusetts and I am an associate at Harmon Law Offices, P.C. I submit this affidavit in support of the request for attorney fees and costs;
3. The Plaintiff's fees to date for prosecution of this Interpleader action are \$3,987.44 including costs for filing fees, and service of the summons.
4. The costs associated with this matter total \$539.94 including the cost for filing the complaint and the cost for the sheriff service of the complaint.



5. The legal fees associated with this matter are \$3,447.50 which is 14.65 hours billed at \$195.00 per hour and 6.95 hours billed at \$85.00 per hour.

(See attached Exhibit "A")

4. I performed and/or oversaw all of the work for this Interpleader Action.

5. The Defendant is not an infant or incompetent person.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 11 day of November 2004.

  
\_\_\_\_\_  
David M. Rosen

**HARMON LAW OFFICES, P.C.**  
150 CALIFORNIA STREET  
NEWTON, MASSACHUSETTS 02458

MAILING ADDRESS:  
P.O. BOX 610389  
NEWTON HIGHLANDS, MA 02461-0389

TEL (617) 558-8400  
FAX (617) 244-7304

**SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND**

November 2004

GMAC Mortgage Corporation  
500 Enterprise Road, Suite 150  
P.O. Box 969  
Horsham, PA 19044-0969

**Re: GMAC Mortgage Corporation v. Jeffrey Bayko, et al.**

FOR PROFESSIONAL SERVICES RENDERED  
**INTERPLEADER ACTION \$ 3,987.44**

Disbursements:

Filing Fee:	\$ 345.00
Sheriff's Service:	\$ 194.94

**Total Disbursements: \$ 539.94**

Legal Fees:

14.65 hours @ \$195.00/hour	\$ 2,856.75
6.95 hours @ \$85.00/hour	\$ 590.75

**Total Legal Fees: \$ 3,447.50**

**TOTAL DUE \$ 3,987.44**

**CERTIFICATE OF SERVICE**

I, David M. Rosen, hereby certify that true copies of the Motion to Deposit and Withdraw and the Affidavit of David M. Rosen were served on November 18, 2004 by mailing via first class mail, postage prepaid, to:

Attorney Charles D. Rotondi  
79 State Street  
Newburyport, MA 01950

Jeffrey L. Bayko  
61 Story Avenue  
Newburyport, MA 01950

Attorney Timothy Sullivan  
451 Andover Street, Suite 185  
North Andover, MA 01845

Christine Ann Faro, Esq.  
79 State Street  
Newburyport, MA 01950

John Aquino  
Anderson & Aquino, LLP  
260 Franklin Street  
Boston, MA 02110

Hans R. Hailey, Esq.  
225 Friend Street, 5<sup>th</sup> Floor  
Boston, MA 02114

Gary E. Evans, Esq.  
Evans Law & Associates  
8 Prospect Street  
Georgetown, MA 01833

Michele A. Rooke  
Doherty, Wallace, Pillsbury and Murphy  
One Monarch Place  
1414 Main Street, Suite 1900  
Springfield, MA 01144-1900

Brenda Hyde  
Internal Revenue Services  
Special Procedures  
P.O. Box 9112, Stop 20800  
J.F.K. Post Office  
Boston, MA 02203

Eileen Ryan McAuliffe  
Department of Revenue  
Litigation Bureau, 7<sup>th</sup> Floor  
P.O. Box 9565  
100 Cambridge Street  
Boston, MA 02114



David M. Rosen

### CERTIFICATE OF SERVICE

I, David M. Rosen, hereby certify that true copies of the Motion to Intervene To Deposit Funds With Court and/or For Further Instructions and the Notice of Hearing were served by mailing via first class mail, postage prepaid, to:

Attorney Charles D. Rotondi  
79 State Street  
Newburyport, MA 01950

Attorney Timothy Sullivan  
451 Andover Street, Suite 185  
North Andover, MA 01845

Christine Ann Faro, Esq.  
79 State Street  
Newburyport, MA 01950

John Aquino  
Anderson & Aquino, LLP  
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Boston, MA 02110

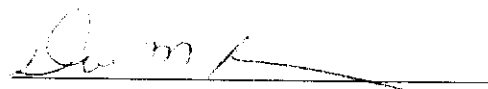
Hans R. Hailey, Esq.  
Law Offices of Hans R. Hailey  
11 Beacon Street  
Boston, MA 02108

Gary E. Evans, Esq.  
Evans, Evans & Bingham  
8 Prospect Street  
Georgetown, MA 01833

Michele Rooke, Esq.  
Doherty, Wallace, Pillsbury and Murphy, P.C.  
One Monarch Place, Suite 1900  
Springfield, MA 01855

Lydia Bottome Turanchik  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 55  
Ben Franklin Station  
Washington, D.C. 20044

Eileen McAuliffe  
Department of Revenue  
Collections Bureau  
P.O. Box 7021  
Boston, MA 02204



David M. Rosen

Dated: February 4, 2005